

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley, Esq. (SBN 174156)
Kiley L. Grombacher, Esq. (SBN 245960)
Taylor L. Emerson, Esq. (SBN 225303)
2815 Townsgate Road, Suite 130
Westlake Village, California 91361
Telephone: (805) 270-7100
Facsimile: (805) 270-7589
mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com

ROTHSCHILD & ASSOCIATES, APC

Kristi D. Rothschild, Esq. (SBN 222727)
Julian Alwill, Esq. (SBN 259416)
27 W. Anapamu Street, Suite 289
Santa Barbara, California 93101
Telephone: (805) 845-1190
Facsimile: (805) 456-0132
krothschild@kdrllawgroup.com
jalwill@kdrllawgroup.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANDREA RIDGELL, on behalf of
herself and others similarly situated

Plaintiff,

v.

FRONTIER AIRLINES, INC. a
Colorado corporation; AIRBUS S.A.S.,
a foreign corporation doing business in
the State of California; AIRBUS
GROUP HQ INC., a corporation doing
business in the State of California
Defendants.

CASE NO. CV 18-4916 PA (AFMx)

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION TO SERVE
DEFENDANT AIRBUS S.A.S
UNDER FEDERAL RULE 4(f)(3)**

DATE: May 6, 2019

TIME: 1:30 p.m.

DEPT: 9A

**TO THE HONORABLE COURT, ALL INTERESTED PARTIES AND
THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on May 6, 2019 at 1:30 p.m. before the Honorable Percy Anderson, in Courtroom 9A of the United States District Court located at 350 West 1st Street, Los Angeles, California, 90012, plaintiff, Andrea Ridgell ("Plaintiff") shall and does move this Court for entry of an Order pursuant to Federal Rule 4(f)(3). authorizing service upon Defendant Airbus S.A.S. ("Airbus") through international courier.

The Motion is made on the accompanying Memorandum of Points and Authorities, the declaration of Kiley Lynn Grombacher, the Proposed Order, all other pleadings and papers on file in this action, and all further evidence and argument that may be adduced in connection herewith.

DATED: April 6, 2019 **BRADLEY/GROMBACHER, LLP**

By: /s/ Kiley Lynn Grombacher
Marcus J. Bradley, Esq.
Kiley Lynn Grombacher, Esq.
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Andrea Ridgell (“Plaintiff”) moves for an Order authorizing service upon Defendant Airbus S.A.S. (“Airbus”) through international courier pursuant to Federal Rule 4(f)(3).

I. INTRODUCTION

Defendant Airbus, which is located in France, designs and manufactures the aircrafts that are the subject of this lawsuit. As a result, Airbus is the entity with the most knowledge of the facts that form the basis of many of Plaintiff’s claims in this action. Nearly nine months ago, Plaintiff sought to effectuate service directly on Airbus by making a request of service through the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters, Nov. 15, 1965 (the “Hague Convention”). Despite Plaintiff’s efforts to accomplish service through the Hague Convention over the past year, at a cost exceeding Five Thousand Dollars service has not yet been effectuated. When service through the Hague Convention is frustrated and delayed as it has been here, Rule 4(f)(3) allows district courts to order an alternative means of service, including service via international courier.

II. STATEMENT OF RELEVANT FACTS

Plaintiff, has diligently sought to effectuate service so that she may prosecute this action. Promptly upon filing, Plaintiff caused the case initiating documents, including the summons and the more than twenty-five-page complaint to be translated into French. (Grombacher Decl. at ¶ 7.) The service documents, were then transmitted to ABC Legal Services, Inc. (“ABC Legal”) for transmittal and service. (Id. at ¶ 8.)

On or about July 12, 2018, a request for service along with the summons, complaint and other case initiating documents and orders was sent by ABC Legal to the Ministry de la Justice in Paris. (Id. at ¶9.) The process request was confirmed received by the Ministry de la Justice in Paris on July 16, 2018 (Id. ¶ 10.) ABC Legal has made attempts to follow up regarding service, however, at present, service upon Airbus has

1 not been fully effectuated. (Id. at ¶¶ 11, 12.)

2 **III. ARGUMENT**

3 Federal Rule of Civil Procedure 4(h) governs international service of process on
4 foreign businesses. Specifically, Rule 4(h)(2) authorizes service of process on a foreign
5 business in the same “manner prescribed by Rule 4(f) for serving an individual, except
6 personal delivery....” Fed. R. Civ. P. 4(h)(2).

7 Federal Rule of Civil Procedure 4(f) provides three methods for service. First,
8 Rule 4(f)(1) allows for service by “any internationally agreed means ... that is
9 reasonably calculated to give notice, such as those authorized by the Hague Convention
10 on the Service Abroad of Judicial and Extrajudicial Documents.” Fed. R. Civ. P. 4(f)(1).
11 Second, Rule 4(f)(2) provides that “if there is no internationally agreed means, or if an
12 international agreement allows but does not specify other means,” then service may be
13 effectuated in accordance with the laws of the foreign country, as directed by the foreign
14 authority in response to a letter rogatory or letter of request, or by using any form of
15 mail that the clerk addresses and that requires a signed receipt, unless prohibited by the
16 foreign country's laws. Fed. R. Civ. P. 4(f)(2). Third, Rule 4(f)(3) permits service by
17 “other means not prohibited by international agreement, as the court orders.” Fed. R.
18 Civ. P. 4(f)(3).

19 Based upon the plain language of Rule 4(f)(3), the only two requirements for
20 service under that Rule are that it must be (1) directed by the court, and (2) not
21 prohibited by international agreement. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d
22 1007, 1014 (9th Cir. 2002). Rule 4(f)(3) is “neither a ‘last resort’ nor extraordinary
23 relief.’ It is merely one means among several which enables service of process on an
24 international defendant.” *Rio Props., Inc.*, 284 F.3d at 1015. As such, a plaintiff is not
25 required to first exhaust the methods contemplated by Rule 4(f)(1) and (2) before
26 petitioning the Court for permission to use alternative means under Rule 4(f)(3). *Rio*
27 *Props., Inc.*, 284 F.3d at 1015.

28 The Advisory Committee Notes to Rule 4 provide further guidance as to when

1 alternative service may be appropriate:

2 The Hague Convention, for example, authorizes special forms of service
3 in cases of urgency if conventional methods will not permit service within
4 the time required by the circumstances. Other circumstances that might
5 justify the use of additional methods include the failure of the foreign
6 county's Central Authority to effect service within the six-month period
7 provided by the Convention, or the refusal of the Central Authority to serve
8 a complaint seeking punitive damages or to enforce the antitrust laws of
9 the United States. In such cases, the court may direct a special method of
10 service not explicitly authorized by international agreement if not
11 prohibited by the agreement. Inasmuch as our Constitution requires that
12 reasonable notice be given, an earnest effort should be made to devise a
13 method of communication that is consistent with due process and
14 minimizes offense to foreign law.

15 Fed. R. Civ. P. 4, Advisory Committee Note to Subdivision (f)(3).

16 Under Rule 4(f)(3), “courts have authorized a wide variety of methods of service
17 including publication, ordinary mail, mail to the defendant’s last known address,
18 delivery to the defendant’s attorney, telex, and most recently, email.” *Rio Props.*, 284
19 F.3d at 1016. Notably, in *Rio Properties*, the Ninth Circuit held that the district court
20 properly found that alternative service via international courier and via email was
21 constitutionally acceptable. *Id.* at 1016–17. The Ninth Circuit confirmed that the
22 “Constitution does not require any particular means of service of process, only that the
23 method selected be reasonably calculated to provide notice and an opportunity to
24 respond.” *Id.* at 1017; see also *Chanel, Inc. v. Lin*, 2009 WL 1034627, at *2 (S.D.
25 Fla. April 16, 2009) (noting that a method of service under Rule 4(f)(3) should be
26 calculated “to apprise interested parties of the pendency of the action and afford them
27 an opportunity to present their objections”).

28 Article 10(a) of the Hague Convention states, “[p]rovided the State of destination
does not object, the present Convention shall not interfere with—a) the freedom to send
judicial documents, by postal channels, directly to persons abroad....” Convention done
at the Hague Nov. 15, 1965, art. 10(a), 20 U.S.T. 361, 658 U.N.T.S. 163, C.T.S.

1 1989/2¹.

2 By this motion, Plaintiff requests that the Court permit her to serve Airbus via
3 international courier, Federal Express, to Airbus' headquarters in Toulouse, France as
4 well as its listed "U.S. Contact" in Virginia².

5 Service of process by international courier has been widely permitted under the
6 Hague Convention, with some courts construing service of process by postal channels
7 to include service of process by international courier. *Mainstream Media, EC v. Riven*,
8 No. C 08-3623, 2009 WL 2157641, at *3 (N.D. Cal. July 17, 2009) (noting that
9 previously the "court granted [Plaintiff's] motion for alternative service on [Defendant]
10 pursuant to Federal Rule of Civil Procedure 4(f)(3), directing that the prior delivery of
11 service documents by [Plaintiff] to [Defendant] via e-mail, international mail, and
12 international courier (Federal Express) was effective service of process."); *Jenkins v.*
13 *Pooke*, No. C 07-03112, 2009 WL 412987, (N.D. Cal., Feb. 17, 2009) (directing that
14 service be effectuated via electronic mail, international mail, and international courier);
15 *R. Griggs Grp. Ltd. v. Filanto Spa*, 920 F. Supp. 1100 (D. Nev. 1996) (upholding
16 service by Federal Express under Article 10(a) of the Hague Convention); *Power*
17 *Integrations, Inc. v. Sys. Gen. Corp.*, No. C 04-02581 JSW, 2004 WL 2806168 (N.D.
18 Cal. 2004) (stating that Griggs found that Federal Express was a "postal channel" for

19 ¹ Although there is some disagreement as to whether Article 10 is intended to refer to
20 service of process, the most widely supported interpretation of Article 10(a) is one that
21 permits the use of postal channels as a means of proper service of process under the
22 Hague Convention. See *Dierig v. Lees Leisuire Indus., Ltd.*, No. 11-125, 2012 U.S.
23 Dist. LEXIS 26181, at *50-52 (E.D. Ky. Feb. 28, 2012) (noting the disagreement among
24 some circuits as well as district courts for the Sixth Circuit as to whether service by
25 mail is permitted, but following the approach permitting service of process by mail,
26 which is consistent with the drafters' intent as well as the understanding on the
27 signatories); *Rae Group, Inc. v. AIESEC Int'l*, No. 08-10364, 2008 U.S. Dist. LEXIS
28 83519, at *2-8 (E.D. Mich. Oct. 20, 2008) (holding that based "on the history of the
Hague Convention and the interpretation of Article 10(a) by persons responsible for its
enforcement, the Court concludes that Article 10(a) allows service of process on an
international defendant by registered international mail.").

² Plaintiff shall direct such service to the following addresses: 1, Rond Point Maurice
Bellonte Blagnac Cedex Toulouse, 31707 and Airbus Americas Inc., 2550 Wasser
Terrace, Suite 9000, Herndon, Virginia, 20171. While Airbus has a processing plant in
Mobile, Alabama, Airbus lists the Virginia address as its U.S. Contact for commercial
aircraft. See <https://www.airbus.com/us/en/contact-us.html>.

1 purposes of the Hague Convention).

2 **IV. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests that the Court authorize
4 service upon Airbus S.A.S. via Federal Express.

5
6 DATED: April 6, 2019

BRADLEY/GROMBACHER, LLP

7
8 By: /s/ Kiley Lynn Grombacher
9 Marcus J. Bradley, Esq.
10 Kiley Lynn Grombacher, Esq.
11 Attorneys for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28